* **HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) No.27/2001

Judgment reserved on : 23rd August, 2007
Date of decision : 1st October, 2007

M/S. AJANTA OFFSET & PACKAGINGS LTD.
..... PLAINTIFF
! Through : Ms. Meenakshi, Advocate

Versus

$ M/S. GETEX ENTERPRISES LTD. & ORS.
..... DEFENDANTS
^ Through : Nemo.
%

CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not?

(3) Whether the judgment should be reported in the Digest ?

ARUNA SURESH, J.

1. Plaintiff has filed the present suit for recovery of Rs.29,70,750/- against the defendants. The case of the plaintiff in brief is that plaintiff is a duly incorporated company having its registered office at 95-B, Wazirpur Industrial Area, Delhi. Shri Shankar Karji, legal advisor of the company is duly authorized and competent to sign, institute and verify the proceedings on behalf of the plaintiff company by virtue of Board Resolution dated 8th June, 1990, that it is engaged in the business of printing of various

materials like books, posters, leaflets, calendars, danglers etc. at Delhi and Faridabad and that enjoys the reputation of being one of the largest printing networks in Northern India, that M/s. Getex Enterprises Limited, defendant No.1 is a limited company incorporated under the United Kingdom's laws having its registered office at London and Mr. Jay Thakerar, defendant No.3 is the person incharge and responsible for the day to day affairs of the business of M/s. Getex Enterprises Limited, defendant No.1 as well as M/s. Ballward Limited, defendant No.2 another company incorporated under the laws of Great Britain, that defendant No.1 and 2 offered to act as representative of the plaintiff for the plaintiff's export order in England on the terms that plaintiff would pay to the defendant No.1 commission on the value of the order at a pre-determined rate and where the order was routed through defendant No.1 and 2 and the invoices were raised on the letter of credits opened by the defendants the invoices would be paid on net off value without any commission and in case they were routed through the defendants and payment made by the defendants, the billing was to be on net invoice value basis and the defendants were to claim their charges for handling the order directly from the foreign buyers, that defendant No.1 and its sister concern, defendant No.2 placed orders

with the plaintiff for printing of year 2000 diaries on behalf of the client of defendant No.1 M/s. Europa Office Limited and M/s. Kingfield, that this order was totally mis-handled by the defendants as they failed to open the letter of credit within the stipulated time, whereas time was the essence of the contract as the order was for year 2000 diaries with a time bound production schedule and the delivery thereafter to the client it being a seasonal product, that defendants continued to revise their purchase order from time to time and due to last minutes changes in the specifications of the diaries or the terms of the purchase order, the entire production schedule was upset and thrown out of gear, that even the quantity of the consignment was also changed more than once, that M/s. Europa Office Limited when failed to get the delivery of goods in time, approached the plaintiff directly through their purchase Director Mr. Neil Basham who came to India, that the said company while directly dealing with the plaintiff company asked for a concessional discount on the agreed price of the diaries on account of incorrect and faulty price given by the defendants as well as incorrect distribution cost forwarded to them by the defendants, that plaintiff was compelled to agree to give the discount of Pound Sterling 10,000 only to M/s. Europa Office Limited on the entire consignment and consequently suffered loss to that extent,

that plaintiff had to incur an expenditure of Rs.2,50,000/- in air lifting the PVC for diaries in order to meet the dead line of production schedule because of variation in size and last minute revision in the purchase order, that plaintiff also had to incur losses of about Rs.5,00,000/- on account of this variation on account of wastage of cover board and excess stock of materials, that M/s. Kingfield decided not to go ahead with the order of the diaries at all and cancelled the order which also lead to the substantial loss to the plaintiff as it had purchased the raw material for supply of diaries to the said firm, that plaintiff suffered loss of Rs.5,00,000/- on account of down time of machine, that plaintiff had also suffered production loss assessed at Rs.5,00,000/- due to last minute revision in the orders, that the plaintiff company also suffered loss in reputation due to false propaganda created by the defendants among the clients of the plaintiff in England that defendant No.1 held copyright in respect of map of London Underground Transport from London Transport Museum and UK Roads and Ferries Map by London Cartographers, that copyright was obtained by defendant No.1 on behalf of the plaintiff and were meant to be utilized for being printed in the diaries being printed by the plaintiff and that defendants raised some baseless debit notes which were arbitrary, excessive and without any base. Plaintiff has

claimed Rs.1,00,000/- as damages for loss of reputation. In all a sum of Rs.25,50,000/- has been claimed by the plaintiff besides interest of Rs.4,20,750/- on the said amount till the filing of the suit @ 18% per annum. In all the plaintiff has claimed Rs.29,70,750/- against the defendants which the defendants have failed to pay despite service of legal notice dated 10th November, 2000, hence the present suit.

2. Summons were ordered to be served upon defendants No.1 to 3 vide order dated 29th January, 2002. The plaintiff could not take effective steps for service of the summons upon the defendants. However, a letter dated 6th June, 2003 was received by the Court from the defendants Solicitors indicating that they had information of the institution of the suit. But none appeared on behalf of the defendants despite this letter. On the basis of this letter following order was passed by this court on 16th September, 2004:-

> "I have perused the order dated 9.9.2004 passed by the Joint Registrar. A letter is purported to have been issued by the Solicitors of the defendants stating that this Court ought not to exercise territorial jurisdiction over the dispute. The Purchase Order dated 4.5.1999 has been addressed to the defendants in Delhi and the goods were to be dispatched from New Delhi to the United Kingdom. Prima facie, therefore, this Court has jurisdiction.

> Secondly, it has been stated that the documents filed alongwith plaint have not been supplied. This is a matter in respect of which submissions can be made before the Court and appropriate orders would thereupon be passed. There is no justification for the defendants to be absent from the Court. The defendants are according set ex parte.
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> Plaintiff to lead evidence by means of Affidavits which should be filed within eight weeks from today. Matter be listed before the Joint Registrar for exhibition of documents on 18.11.2004.
>
> However, learned counsel for the plaintiff is directed to forward a copy of this order through courier, fax, internet and e-mail to the defendants and their Solicitors".

Thus, defendants were accordingly proceeded ex-parte.

3. Plaintiff company filed affidavit of Shri Shankar Karjee its legal advisor Ex.PW1/A and that of Shri K.K. Aggarwal its Financial Controller Ex.PW2/A in evidence to support its case. From the Board of Resolution dated 8.06.1990 it is proved that company authorized Shri Shanker Kumar Karjee, Legal Advisor to institute suit and to sign and verify the petition and other such papers and to engage Advocate on behalf of the plaintiff company to conduct cases. Copy of the certificate of incorporation of the plaintiff company Ex.PW1/2 proves that plaintiff company is duly incorporated company under the Companies Act, 1956. From the testimony of Shri

Shanker Karjee it is proved that defendant No.1 (M/s. Getex Enterprises Limited) and defendant No.2 (M/s.Ballward Limited) through defendant No.3 (Mr. Jay Thakerar) agreed to represent the plaintiff for the plaintiff's various export orders in England. It is further proved that it was agreed that in case purchase order were placed directly by the customers, the plaintiff would pay to defendant No.1 commission on the value of the order at a pre-determined rate. In case the order was routed through defendant No.1 and 2 and the invoices were raised or letters of credits opened by the defendants, the invoices would be paid on net off value and without any commission and in case orders routed through defendants and payment made by the defendants the billing was to be on net invoice value basis and the defendants were to claim their charges for handling the order directly from the foreign buyers.

4. It is established on the record from the testimony of Shri Shankar Karjee, PW1 and Shri K.K. Aggarwal, PW2 that defendants No.1 & 2 through defendant No.3 placed purchase orders Ex.PW1/3 (colly) for printing of year 2000 diaries on behalf of M/s. Europa Office Limited and M/s. Kingfield, clients of defendant No.1. It is proved in evidence that this order was mis-handled by the defendants as they

failed to open the letter of credit within the stipulated time though time was essence of the contract as it was to be executed within a time bound production schedule, diaries being a seasonal product. There had been changes in the purchase orders specifications and quantities of the consignment more than once at the hands of the defendants.

5. From the testimony of PW1 and PW2 it is further proved in evidence which goes unrebutted on the record that Mr.Neil Basham, Purchase Director of M/s.Europa Office Limited on whose behalf the order was placed directly dealt with the plaintiff company when it failed to get the goods through the defendants and the plaintiff had to release the entire consignment on discount of Pound Sterling 10,000/-. Plaintiff also suffered because M/s. Kingfield decided not to go ahead with the orders of the diaries. This fact is also proved from various communications Ex.PW1/5 (colly). I am convinced that plaintiff had to air-lift the PVC because of modifications in the specifications, size, etc. of the diaries and in the whole process it had to spend an amount of Rs.2,50,000/- as the air lifting cost. Plaintiff has also assessed loss due to excess material on account of down time of machine and production loss due to last minute revision in the order amounting to Rs.5,00,000/-, which in my view is

reasonable loss assessed by the plaintiff.

6. Plaintiff has claimed a sum of Rs.1,00,000/- due to loss in reputation as defendants propagated that they were the copyright holders in respect of map of London Underground Transport from London Transport Museum and UK Roads and Ferries Map by London Cartographers and advertised their claim to various clients of the plaintiff including M/s. Europa Office Limited. Plaintiff did raise objection to this type of statement made by the defendants as proved on record from the communication Ex.PW1/4. This communication clearly indicates that permission to publish the said maps was obtained by the defendants on instructions of the plaintiff and exclusively on their behalf to print the same in the diaries as ordered by M/s. Europa Office Limited. Letter Ex.PW1/4(A) is a protest letter written by the plaintiff company to defendant No.3 Mr.Jay Thakerar informing him that it had received the communication from M/s. Europa Office Limited dated 5th November, 1999 informing the plaintiff that defendant No.3 had made a telephone call to them contending that they held copyright in respect of the London Underground Map that had been printed in the diaries for the year 2000 by the plaintiff and called upon defendant No.3 to desist from making any frivolous claim in respect of the said copyright.

7. Letter Ex.PW1/6 is written by the plaintiff to London Transport Museum as well as to London Cartographers seeking clarifications regarding the claim in the copyright in the maps of the London Underground Transport and UK Roads and Ferries Map. However, the damages assessed by the plaintiff for loss of reputation in public are only at Rs.1,00,000/- which are quite reasonable.

8. The defendants have failed to pay the amount as claimed by the plaintiff despite receipt of legal notice Ex.PW1/7. Plaintiff has claimed interest @ 18% per annum on the amount of Rs. 25,50,000/- amounting to Rs.4,20,750/- till the filing of the suit. Since it is a commercial transaction, plaintiff is entitled to the interest as claimed.

9. In view of my discussion as above, I conclude that plaintiff is entitled to the amount as prayed in the plaint. Hence I hereby pass a decree of Rs.29,70,750/- in favour of the plaintiff and against the defendants with cost. Plaintiff is also awarded interest pendente lite and future interest @ 18% per annum on the amount of Rs.25,50,000/- from the date of the institution of the suit till realization. Decree be prepared accordingly. File be consigned to record room.

OCTOBER 1, 2007 **ARUNA SURESH**
vk **(JUDGE)**